87 N. C. 367; *Cliquots Champagne,* 70 U. S. (3 Wall.) 114; *Peter* v. *Thickstun,* 51 Mich. 589. In theory the principal case is not in harmony with the cases just cited, for it appears that the quotation offered and rejected was the official quotation of that market, made up as all quotations on eggs were made in that market, and by persons familiar with the course of trade in that market. Some courts refuse to receive market quotations unless it be shown how they are made up. *Bunte* v. *Schuman,* 92 N. Y. Supp. 806; *Whelan* v. *Lynch,* 60 N. Y. 469; *Merewether* v. *O. & K. C. R. Co.,* 128 Mo. App. 647, 107 S. W. 434. Contra: *Mt. Vernon Brewing Co.* v. *Teschner,* 108 Md. 158, 69 Atl. 702. Some courts go so far as to allow a witness to testify to the market price of commodities, whose knowledge is based on quotations found in newspapers or received from dealers. *Tex. Cent. R. Co.* v. *Fischer,* 18 Tex. Civ. App. 78; *Tex. & Pac. R. Co.* v. *W. Scott & Co.* (Tex.) 86 S.W. 1065; *Chicago R. I. & T. R. Co.* v. *Hassel,* 36 Tex. Civ. App. 522, 81 S. W. 1241; *Suttle* v. *Falls,* 98 N. C. 393; *Smith* v. *N. C. R. Co.,* 68 N. C. 107. Contra: *Tountain* v. *Wabash R. Co.,* 114 Mo. App. 683, 90 S. W. 393, 114 Mo. App. 683; *Norfolk & W. R. Co.* v. *Reeves,* 97 Va. 284; *Ferris* v. *Sutcliffe,* 1 Alb. Law J. 238; *Bunte* v. *Schuman,* 92 N. Y. Supp. 806.

EXECUTORS AND ADMINISTRATORS—DENIAL OF APPLICATION FOR APPOINTMENT OF ADMINISTRATOR—REMEDY—MANDAMUS APPEAL.—Sylvanus Flick died intestate in Missouri and his only son applied for letters of administration, which the Probate Court refused to grant. A statute in force in Missouri provides that "Letters of administration shall be granted: First, to the husband or wife; secondly, to those who are entitled to distribution of the estate, or one or more of them, as the court or judge or clerk in vacation shall believe will best manage and preserve the estate." *Held*—, the rule laid down in the statute is not so strict as to preclude a Probate Court from passing over one entitled to letters under it, where the one so entitled is unfit to administer and to appoint him would subject the assets of the estate to unusual hazard. *State ex. Rel. Flick* v. *Reddish et al.* (1910), — Mo. App. —, 129 S. W. 53.

This case is also interesting in respect to procedure. The relator appealed from the ruling of the Probate Court and failing in the Circuit Court, appealed to the Court of Appeals where his right to appeal at all from the ruling of the Probate Court was denied and the case dismissed. That court, however, certified the case to the Supreme Court which affirmed the holding of the Court of Appeals—*Flick* v. *Schenk* (1908), 212 Mo. 275—and pointed out that the proper remedy was by a proceeding in mandamus. Accordingly, relator instituted the present proceeding. The Circuit Court granted the writ, but an appeal was again taken and the same court which had previously denied relator an appeal held mandamus improper in this case, since the Probate Court had acted judicially and not ministerially and appeal was the proper remedy.

FRAUD—FALSE REPRESENTATION—KNOWLEDGE OF FALSITY.—Plaintiff sued defendant for the amount of a promissory note given by plaintiff to defendant for an option which defendant claimed he held on certain land. The

note was assigned to an innocent purchaser and plaintiff was compelled to pay it. Plaintiff alleged that he was induced to sign the note by the fraudulent representation of defendant that he had an option on the land when in truth and fact he had none. It was proved that defendant had no option whatever on the land, but it appeared that he believed he had been given an option. *Held,* that defendant was liable for the money that he obtained from plaintiff by false representations as to the option on the land, whether he knew they were false or not. *Magill et al.* v. *Coffman et al.* (1910), — Tex. — 129 S. W. 1146.

This decision, while in accord with the principle stated in *Loper* v. *Robinson,* 54 Tex. 510, and *Culbertson* v. *Blanchard,* 79 Tex. 486, is opposed to the well established rule that to support an action of deceit based on a false representation a *scienter* must be proved. *Glasier* v. *Rolls,* 42 Ch. Div. 436; *Derry* v. *Peek,* 14 App. Cas. 337; *Hindman* v. *Louisville First Nat. Bank,* 112 Fed. 931; *Belding* v. *King,* 159 Fed. 411. The courts of twenty-six states have followed this rule, the strictness with which it is applied varying from the requirement of actual knowledge of the falsity, *Jolliffe* v. *Collins,* 21 Mo. 338, to merely a representation made without knowledge of its truth or falsity, or under circumstances in which the person making it ought to have known of its falsity. *Wheeler* v. *Baars,* 33 Fla. 696. However, the rule of the Texas court, while contrary to that of most of the states, is not without support. *Totten* v. *Burhans,* 91 Mich. 495; *Davis* v. *Nuzum,* 72 Wis. 439; *Foley* v. *Holtry,* 43 Neb. 133.

HOMESTEAD—PROPERTY CONSTITUTING—EXEMPTIONS.—A Texas statute establishes a business homestead consisting of a lot or lots, provided same be used as place to exercise the calling of the head of the family. A school teacher maintained a normal college, rooming and boarding students on the premises. *Held,* land on which the college buildings were located is exempt, as business homestead. But other lots on which students were roomed and boarded are not so exempt. Likewise other parcels used as baseball ground and vegetable garden to supply students' table, are not exempt. *Harrington et al.* v. *Mayo* (1910), — Tex. Civ. App. —, 130 S. W. 650.

Under same provision it has been held that there may be several lots within the business homestead exemption, but they must constitute a single place at which business is transacted. *Rock Island Plow Co.* v. *Alten et ux,* 102 Tex. 366, 116 S. W. 1144. The courts seem to construe statutes more strictly in regard to business homestead, refusing as here the exemption in case of separation of lots, whereas the exemption is more liberally allowed, under the same constitutional provision, in case of homestead proper. *Anderson* v. *Sessions,* 93 Tex. 279, 51 S. W. 874, 77 Am. St. Rep. 873.

INFANCY—ESTOPPEL TO PLEAD.—Appellant, an infant, signed a note as accommodation maker. The note was accepted by respondent on the faith of appellant's representations by conduct or words that he had arrived at the age of twenty-one years. Whether he expressly so represented was disputed, the preponderance of the evidence being in the negative. From appellant's